

**Testimony Before the House Health Policy Committee
Regarding House Bill 4603 (Rep. Margaret O'Brien)
Physical Therapy Direct Access**

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Kristen Kraft – BCBSM Office of Governmental Affairs

Madame Chair/Members:

On behalf of Blue Cross Blue Shield of Michigan, I appreciate the opportunity to address our concerns relative to House bill 4603. As written, this bill would allow a patient to seek physical therapy services without medical diagnosis or a referral from a physician or other medical practitioner. Blue Cross Blue Shield does not believe that current statutory standards requiring physician referral impede access to care. Elimination of the current referral standards will likely lead to a proliferation of physical therapy services – some of which would likely be deemed medically unnecessary or an altogether inappropriate treatment option for the patient.

Proper medical diagnosis and referral from a physician or other medical provider are an important component in the coordination and delivery of patient care. Treatment without a complete and proper diagnosis is irresponsible and only could serve to lower the quality of patient care in Michigan. While we do not discount the fact that physical therapists are a beneficial component of the health care delivery system, they are trained to provide therapy — they are not trained to provide diagnoses medical conditions.

We believe the current provisions contained in the state's Public Health Code appropriately define the scope of physical therapy according to a therapist's required level of education and training. Under the Code, the practice of physical therapy does not include "the identification of underlying medical conditions or etiologies" or the "establishment of medical diagnoses." We consider these standards to not only be the most cost-effective, but also the safest route for the patient. Allowing a patient to self-refer would be counterintuitive to the "Medical Home Model", which was created to ensure proper coordination of care through a primary care physician.

Based on the current utilization levels among Blue Cross subscribers, access to physical therapy services is not an issue. From mid 2009 through mid 2010, Blue Cross Blue Shield covered over

2.7 million physical therapy visits at a cost of nearly \$279; Blue Care Network – the Blues’ HMO subsidiary – covered an additional 400,000 visits at a cost of over \$32 million. We were unable to secure related worker’s compensation costs from the Accident Fund prior to this hearing. If House Bill 4603 were to become law, an individual could obtain physical therapy services for an issue which may have a more significant, unknown diagnosis – potentially causing a patient additional harm and result in the need for further medical care.

The ability to treat without first receiving a proper medical evaluation and diagnosis from a physician or other health care provider could potentially result in increased medical malpractice claims. According to a landmark malpractice claims study conducted by the CNA/HPSO-recipients of the Foundation for Physical Therapy’s ‘Premier Partner in Research Award’ and the APTA’s primary carrier for Professional Indemnity Insurance – physical therapists are increasingly finding themselves defending the care they provide - and at a high cost.

The CNA study contends that Professional liability claims brought against physical therapists are notable. In part, this was attributed to the varying scope of practice standards set for physical therapists from state to state – making it more difficult to adequately define consistent, specific standards for physical therapists’ practice. Also, the demand for physical therapy services is growing as the population ages and with it, is increasing potential liability. In fact, the study found that over \$43 million was paid out for more than 1,464 malpractice claims involving physical therapists (those cases that were filed but did not result in a settlement were not included).

Excerpts from the CAN findings:

- 77-percent of closed claims with an indemnity payment occurred at non-hospital-based physical therapy offices or clinics, with the most severe closed claims occurring in nursing home settings - resulting in an average paid indemnity of \$76,215.
- Fractures and burns from improper technique and injury during heat therapy or hot packs accounted for 45-percent of the closed claims with indemnity payment.
- Delay in recovery accounted for 11-percent.
- The most severe claims involved the physical therapist’s alleged failure to report the patient’s condition to a physician or other licensed practitioner responsible for the patient’s overall medical care. Allegations of failure to complete a proper patient assessment, failure to refer the patient and/or seek a consultation, and failure to follow established policies are among the claims with the highest severity. Each of these

allegations relates to the physical therapist's responsibility to properly assess patients. The allegations also relate to the responsibility to communicate with physicians and other healthcare professionals regarding patients' symptoms and clinical issues outside the physical therapist's scope of practice.

- A second category of high-severity allegations relates to the therapist's failure to prevent injuries from occurring during the patient's treatment and/or intervention programs
- According to the study, the projected average paid indemnity has increased, on average, approximately 8-10 percent per year - based on a statistical regression.

It is interesting to note that of the forty-six states who have adopted changes to their physical therapy standards, only three (South Dakota, Maryland, and Vermont) provide for full direct access to physical therapy without stipulations or physician referral requirements of any kind. In fact, state regulations vary greatly among the states and many have chosen to include caps on the annual dollar amount of coverage; limited the number of allowable visits; required adequate medical malpractice insurance; and/or included a number of additional stipulations or patient safeguards. A number of states have also included a timeline in which a physical therapist must refer a patient back to a licensed medical provider if improvement does not occur, allowing for disciplinary action for failure to comply with the law.

In closing, we believe House Bill 4603 would negate some important checks and balances that currently exist in Michigan's health care delivery system, resulting in increased health care costs and a reduction in the proper coordination of patient care. The effect of this legislation would be an increase in the utilization of physical therapy services without a corresponding diagnosis to support the treatment plan. In addition, there would be no limitation on how long the treatment could continue or who would determine what changes to the treatment plan might be necessary. In short, the bill could create abuse of physical therapy services with will inevitably increase the cost of health care. It would create an open checkbook to perform services.

Thank you for your time this morning. I would be happy to try and address any questions members might have.

CNA/HPSO Physical Therapy Claims Study Summary

According to a landmark malpractice claims study conducted by the CNA/HPSO - recipients of the 'Premier Partner in Research Award' from the Foundation for Physical Therapy and the APTA's premier carrier for Professional Indemnity Insurance – physical therapists are increasingly finding themselves defending the care they provide - and at a high cost.

Professional Indemnity Insurance is not required in all states and varies according to a therapist's assets. Most policies are designed to respond to medical incidents that arise from the performance of professional services that fall "within the scope" of the policyholder's state practice act. Professional Indemnity Insurance does not protect the therapist from the negligence itself, but can help in fighting a claim financially.

Findings:

The study contends that over \$43 million was paid out for over 1,464 malpractice claims involving physical therapists (those cases that did not result in a settlement were not included). Among other things, the study found:

- "Professional liability claims brought against physical therapists are notable. In part, this is due to the varying scope of practice for physical therapists from state to state. Therefore, it becomes more difficult to define consistent, specific standards for physical therapists' practice. Also, the demand for physical therapy services is growing as the population ages and with it, is increasing potential liability."
- Most (77 percent) closed claims with an indemnity payment occurred at non-hospital based physical therapy offices or clinics, with the most severe closed claims occurring in nursing home settings, resulting in an average paid indemnity of \$76,215
- Fractures and burns from improper technique and injury during heat therapy or hot packs accounted for 45 percent of the closed claims with indemnity payment.
- Delay in recovery accounted for 11 percent
- The most severe primary injuries were loss of an organ or loss of the use of an organ,.
- The most frequent allegations were failure to supervise treatment or procedure, injury during manipulation,
- One case resulted in the loss of an eye (\$474,000), and another resulted in the loss of function of an unspecified organ (\$106,000).
- The most severe claims involved the physical therapist's alleged failure to report the patient's condition to a physician or other licensed practitioner responsible for the patient's overall medical care. Allegations of failure to complete a proper patient assessment, failure to refer the patient and/or seek a consultation, and failure to follow established policy are also among the claims with the highest severity. Each of these allegations relates to the physical therapist's responsibility to properly assess patients. The allegations also relate to the responsibility to communicate with physicians and other healthcare professionals regarding patients' symptoms and clinical issues outside the physical therapist's scope of practice.
- A second category of high-severity allegations relates to the therapist's failure to prevent injuries from occurring during the patient's treatment and/or intervention programs
- The projected average paid indemnity has increased approximately 8 percent per year based on a statistical regression

CNA and HPSO have partnered for more than a decade to deliver insurance solutions to physical therapists, both individual practitioners and group practices. The program has grown significantly since its inception and now provides insurance services to more than 75,000 physical therapy providers.

